

(c) If, on the basis of the petition, affidavit and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that the *prima facie* showing required by paragraph (b) of this section has been made, the presiding officer shall, before ruling on the petition, certify the matter directly to the Commission (the matter will be certified to the Commission notwithstanding other provisions on certification in this part) for a determination in the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made. The Commission may direct further proceedings as it considers appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

§ 2.336 General discovery.

(a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic

Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and provide:

(1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;

(2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation, and

(ii) A copy (for which there is no claim of privilege or protected status), or a description by category and location, of all tangible things (e.g., books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention.

(iii) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, <http://www.nrc.gov>, and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing.

(3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(b) Except for proceedings conducted under subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or

petition to intervene and without further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

(1) The application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;

(2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;

(3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding;

(4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and

(5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(c) Each party and the NRC staff shall make its initial disclosures under paragraphs (a) and (b) of this section, based on the information and documentation then reasonably available to it. A party, including the NRC staff, is not excused from making the required disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or that another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.

(d) The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days.

(e)(1) The presiding officer may impose sanctions, including dismissal of specific contentions, dismissal of the adjudication, denial or dismissal of the application or proposed action, or the use of the discovery provisions in subpart G of this part against the offending party, for the offending party's continuing unexcused failure to make the disclosures required by this section.

(2) The presiding officer may impose sanctions on a party that fails to provide any document or witness name required to be disclosed under this section, unless the party demonstrates good cause for its failure to make the disclosure required by this section. A sanction that may be imposed by the presiding officer is prohibiting the admission into evidence of documents or testimony of the witness proffered by the offending party in support of its case.

(f) The disclosures required by this section constitute the sole discovery permitted for NRC proceedings under this part unless there is further provision for discovery under the specific subpart under which the hearing will be conducted or unless the Commission provides otherwise in a specific proceeding.

§2.337 Evidence at a hearing.

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(b) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(c) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written